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Before the
Federal Communications Commission
Washington, DC 20554

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JUN 27 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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| In the Matter of |) | |
| |) | |
| Implementation of the |) | CC Docket No. 96-115 |
| Telecommunications Act of 1996: |) | |
| |) | |
| Telecommunications Carriers' Use |) | |
| of Customer Proprietary Network |) | |
| Information and Other |) | |
| Customer Information |) | |

REPLY COMMENTS OF DIRECT MARKETING ASSOCIATION

As the leading trade organization representing direct marketers, including those using telephone marketing as a means of transacting business with consumers, the Direct Marketing Association ("DMA") has a substantial interest in the question which has arisen in this proceeding regarding the means to be permitted by the Commission's rules to secure consumer authorization to the release of CPNI. Contrary to the views expressed by some commenters, the DMA believes that there is no valid reason to require that all such requests for authorization be in writing. We therefore urge the Commission to adopt rules that allow such requests to be made orally.

The CPNI statute (47 U.S.C. §222) clearly contemplates that consumers may consent to the release of CPNI to carriers and third parties for "unrelated" purposes. Notice of Proposed Rulemaking at ¶29 ("NPRM"). Expressly and by

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implication, Congress contemplated a three step process by which this is to be accomplished: (i) general notification to consumers of their rights to protect or release this information, (ii) requests to consumers for release of CPNI for specific purposes and (iii) authorization or approval by the individual consumer in response to such requests.

As to the first of these steps, the DMA strongly supports the principle that consumers should be informed of their rights. The carriers, with whom the subscribers regularly deal, are the natural candidate to provide this notification regarding the rules covering CPNI; and the Consumer Federation of America ("CFA"), among others, has suggested that this general information be in writing as a bill stuffer. This or other equally effective means of informing consumers of their rights have been employed in the past. See, e.g., Rules and Regulations Implementing the Telephone Consumer Protection Act, 8 FCC Rcd. 8752, 8781-82 (1992).

Our difference with CFA relates to the second step: the form (written or oral) by which these authorizations or approvals are requested. The statute plainly contemplates that all parties, including carriers, will request permission from the consumer to use CPNI for unrelated purposes, and that the request will encompass such matters as the specific use or uses that will be made of the information, the duration of use and similar matters. It is seemingly the position of CFA and NARUC that this request, as well as the resulting authorization, be in writing. CFA comments at 7.

DMA shares CFA's sensitivity to the privacy rights of consumers and the need for informed decisions by consumers. However, there is no valid reason in policy to forbid either carriers or third parties the use of any medium of communication to request a consumer's consent to the use of this information. The notion that a written request is the only reliable means of assuring an informed consumer's decision to release his or her CPNI is unfounded. It is the content of the request, not the medium, that determines whether a consumer's decision is or is not informed; and, the interactive nature of oral communications provides greater assurance that consumers will be provided with all the information needed to reach an informed decision in each specific case.

In an analogous context the Federal Trade Commission has concluded that the presumption of greater reliability of written communications is "an anachronism" and that no means of communicating with consumers should be subjected to "presumptive invalidity." Mail or Telephone Order Merchandise Rule, 58 Fed. Reg. 49096, 49112 (September 12, 1993). The same considerations apply here. Nor is there any question that the use of the telephone as a means of requesting authorization is the least costly and therefore the most efficient means of implementing the request element of Section 222 from the perspective of the consumer and the carrier or third party prospective user. Thus, whether or not the Commission requires written

authorization in all cases, it should not attempt to dictate the means by which requests for release of CPNI are conveyed to consumers.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ian D. Volner", is written over a horizontal line.

Ian D. Volner, Esq.
Venable, Baetjer, Howard & Civiletti, LLP
1201 New York Avenue, N.W., Suite 1000
Washington, DC 20005-3917

Telephone: (202) 962-4800

Facsimile: (202) 962-8300

Attorneys for Direct Marketing Association, Inc.

Date: June 27, 1996